UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK
---X
In re: **Chapter 11**

NANCY ROJAS-TORRES,

Case No. 1-15-40265-cec

Debtor
---X

SECOND AMENDED DISCLOSURE STATEMENT PERTAINING
TO THE THIRD AMENDED LIQUIDATING PLAN AS MODIFIED

THIS SECOND AMENDED DISCLOSURE STATEMENT (THE "DISCLOSURE STATEMENT") WITH RESPECT TO THE DEBTOR'S THIRD AMENDED LIQUIDATING PLAN AS MODIFIED (THE "PLAN") HAS BEEN APPROVED BY THE COURT.

ALL CREDITORS ARE DEEMED TO HAVE ACCEPTED THE PLAN BY VIRTUE OF THEIR BEING UNIMPAIRED AND OD NOT HAVE A RIGHT TO VOTE ON THE PLAN.

ALL CAPITALIZED TERMS CONTAINED IN THE DISCLOSURE STATEMENT SHALL HAVE THE SAME MEANING AS THOSE CONTAINED IN THE PLAN.

COURT APPROVAL OF THE DISCLOSURE STATEMENT DOES NOT CONSTITUTE COURT APPROVAL OF THE TERMS OF THE PLAN.

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I. INTRODUCTION

Empire Assets Growth, LLC (hereinafter referred to as "Empire Assets" or the "Plan Proponent"), hereby submits this Second Amended Disclosure Statement (hereinafter the "Disclosure Statement") in connection with the solicitation of acceptances of its Third Amended Liquidating Plan as Modified (hereinafter the "Plan") under Chapter 11 of the United States Bankruptcy Code. A copy of the Plan is attached hereto as Exhibit A. All Creditors are urged to carefully review the Plan and Disclosure Statement. All capitalized terms used but not defined herein shall have the meaning set forth in the Plan[1][1]. **Also, all exhibits to this Disclosure Statement are incorporated into and are part of this Disclosure Statement as if set forth in full herein.**

This Disclosure Statement is not intended to replace a review and analysis of the Plan. Rather, it is submitted as a review of the Plan in an effort to explain the terms and implications of the Plan. Every effort has been made to fully explain the various aspects of the Plan as it affects all Creditors, holders of Interests in the Debtor and other parties-in-interest. To the extent a Creditor has any questions, please contact counsel to the Plan Proponent (whose address and telephone number are listed on the cover of this Disclosure Statement) for assistance.

[1]

[1]Unless the context otherwise requires, any capitalized term used herein and not defined in the Plan, but defined in the Bankruptcy Code or Bankruptcy Rules, shall have the meaning set forth therein. Wherever from the context it appears appropriate, each term stated in either of the singular or the plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, the feminine and the neuter. The words "herein," "hereof," "hereto" and "hereunder," and other words of similar import, refer to this Disclosure Statement as a whole and not to any particular portion hereof. The word "including" shall mean "including, without limitation."

On or about July 20, 2015, the Bankruptcy Court entered an order approving the Amended Disclosure Statement as containing information of a kind and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the Debtor and the condition of the Debtor's books and records, to enable Creditors to make an informed judgment with respect to the Plan.

EXCEPT AS SET FORTH IN THIS DISCLOSURE STATEMENT, NO REPRESENTATIONS CONCERNING THE DEBTOR, ITS ASSETS, ITS PAST OR FUTURE OPERATIONS, OR THE PLAN ARE AUTHORIZED BY THE PLAN PROPONENT, NOR ARE ANY SUCH REPRESENTATIONS TO BE RELIED UPON, IN ARRIVING AT A DECISION WITH RESPECT TO THE PLAN.

THE FINANCIAL INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS BEEN BASED UPON INFORMATION SUPPLIED BY THE DEBTOR. AS INDICATED HEREIN, THE FINANCIAL INFORMATION WITH RESPECT TO ASSETS AND LIABILITIES ARE ESTIMATES BASED UPON THE AVAILABLE INFORMATION. THE PLAN PROPONENT, HOWEVER, CANNOT REPRESENT THAT FUTURE EVENTS MAY NOT REQUIRE CHANGES TO THE INFORMATION CONTAINED HEREIN.

Accompanying this Disclosure Statement are the following enclosures:

Order Approving the Disclosure Statement

A copy of the order of the Bankruptcy Court dated on or about July 20, 2015, approving the Disclosure Statement for confirmation of the Plan (the "Disclosure Statement Order").

II. PROCESS OF CONFIRMATION

If confirmed, the Plan will become effective the day on which Property is conveyed free and clear of all liens, claims and encumbrances (except the Mortgage held by secured creditor, Empire Assets Growth, LLC ("Empire Assets" and/or "Secured Creditor")), which conveyance shall occur on the Confirmation Date, or as soon thereafter as may be practicable. Furthermore, when the Plan goes Effective, the Guarantors shall be released from their obligations to Empire Assets in connection with the Guarantees.

III. DISCLAIMERS AND ENDORSEMENTS

This Disclosure Statement contains information supplementary to the Plan and is not intended to take the place of the Plan itself. All of the financial information contained in this Disclosure Statement has been provided by the Plan Proponent and has not been subject to a certified audit. This Disclosure Statement is accurate to the best of the knowledge, information and belief of the Plan Proponent based on information supplied by the Debtor. Each Unsecured Creditor and holder of an Interest is advised to study the Plan carefully to determine the Plan's impact on its Claims or Interests, as the case may be. The Plan Proponent has endeavored to make this Disclosure Statement as clear and accurate as possible.

PLEASE READ THIS DISCLOSURE STATEMENT, INCLUDING THE PLAN, IN ITS ENTIRETY. A COPY OF THE PLAN IS ANNEXED HERETO AS EXHIBIT A. THIS DISCLOSURE STATEMENT SUMMARIZES THE TERMS OF THE PLAN FOR THE CONVENIENCE OF CREDITORS AND EQUITY INTEREST HOLDERS, BUT THE PLAN ITSELF QUALIFIES ALL SUCH SUMMARIES. ACCORDINGLY, IF ANY INCONSISTENCY EXISTS BETWEEN THE PLAN AND THE DISCLOSURE STATEMENT, THE TERMS OF THE PLAN SHALL CONTROL.

IV. GENERAL INFORMATION REGARDING THE DEBTOR

Background of Debtor's Business

The Debtor is primarily in the business of ownership of real property located at 475 East 8th Street, Brooklyn, New York 11215 (the "Property"). The Property is comprised of a residential building with six (6) apartment units. The Debtor purchased the Property sometime in November 2007.

V. THE DEBTOR'S CHAPTER 11 CASE

A. The Filing of the Petition

On January 23, 2015, (the "Petition Date") the Debtor filed a voluntary petition (the "Petition") under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of New

York and thereupon continued in the management and operation of its business and property pursuant to §§ 1107 and 1108 of the Bankruptcy Code. The Debtor is a single asset real estate case as that term is defined pursuant to § 101(51B) of the Bankruptcy Code.

B. **The Schedules and the Bar Date and the Exclusive Period**

On January 23, 2015, together with the filing of the Petition, the Debtor filed Schedules of Assets and Liabilities (the "Schedules"). On March 1, 2015, the Debtor filed an Application for a Bar Date order. That order was granted on April 23, 2015 and the Bar Date was set for June 10, 2015 The exclusive period within which the Debtor had the right to file a plan and solicit acceptances expired on May 26, 2015. The Debtor has not filed a plan or sought to extend the exclusive period. The Debtor has effectively acknowledged that it has no equity in the Property and has, thus, taken no meaningful steps towards reorganization. The Debtor's strategy has simply been to wring as much as she could out of the rental income without paying any debt service.

C. **The 543(d) Motion**

In that regard the Plan Proponent made a Motion Excusing Receiver from Compliance with Turnover Requirements and Establishing Powers and Duties of the Receiver Pursuant to 11 U.S.C. Section 543(d)(1) and Related Relief [Dkt No. 13].

In the 543(d) Motion the Plan Proponent set forth the history of the State Court Litigation, the Loan and the Debtor's contumacious conduct in connection with the state court receiver orders. The representations set forth therein are incorporated herein by reference as if fully set forth herein.

In that regard, on March 27, 2015, the Court entered a Stipulation and Order granting Empire Assets's Motion Excusing Receiver from Compliance with Turnover Requirements and

Establishing Powers and Duties of the Receiver Pursuant to 11 U.S.C. Section 543(d)(1) and Related Relief. [Dkt. No. 28].

The Plan Proponent believes that the Receiver is managing the Property appropriately. Receiver's final accounting recently filed with the Court (Dkt. No. 43) indicates that the Receiver is holding a net cash balance of $36, 341.25.

D. **The Plan**

The fundamental feature of the Plan is that it contemplates the transfer of the Property to the Plan Proponent in satisfaction of its claim. The Plan Proponent's appraisal, submitted as part of its 543(d) motion Transfer shows the Property is worth approximately $900,000.00. Presently this is slightly above the secured claim of $893,000.00. By the time of confirmation it will likely be above that number. In any event the outstanding real estate taxes and other claims clearly exhaust all the equity in the Property. The Plan calls for the payment of all other allowed creditor claims, including administration, priority and unsecured, in full, in cash on confirmation. Thus, the Plan is thus a boon for creditors who would otherwise be entitled to nothing as there is not even sufficient equity to satisfy the secured creditor. The Plan Proponent hereby represents that it has the financial wherewithal to make all the payments required pursuant to the Plan.

Pursuant to § 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer in connection with or in furtherance of the Plan shall not be subject to tax under any law imposing a stamp tax, real estate transfer tax, mortgage recording tax or similar tax. Empire Assets shall have the protections afforded under the "good faith" purchase provisions of § 363(m) of the Bankruptcy Code and all stay provisions under Bankruptcy Rule 6004(h) or elsewhere will be waived.

VI. CLASSIFICATION AND TREATMENT OF CLAIMS, BANKRUPTCY FEES AND EQUITY INTERESTS.

Bankruptcy Fees

Classification: All fees and charges assessed against the Debtor under § 1930 of Title 28 of the United States Code, which are owed to the Office of the United States Trustee.

Treatment: The Bankruptcy Fees and any applicable interest shall be paid by Debtor or the Receiver, in cash, in full on the Effective Date, or until this case is converted, dismissed, or closed by means of a final of decree, whichever happens first.

Administrative Claims

Classification: The Administrative Claims consist of the costs and expenses of administration of the Bankruptcy Case entitled to priority under § 507(a)(2) and allowed under § 503(b) of the Code, including the costs of curing any executory contracts and unexpired leases pursuant to § 365 of the Code, post-petition taxes and professional fees. The Plan Proponent estimates that total administration expenses will equal approximately $25,000.00.

Treatment: The Administrative Claims, subject to the Court's approval of the retention of Debtor's professionals and fee applications pursuant to § 330 of the Bankruptcy Code, shall be paid in cash in full, on the date of the entry of the Court's order approving the fee application. The only professional that the Debtor has retained has been the Debtor's counsel, Law Offices of Julio E. Portilla, P.C. ("Portilla"). Portilla has been paid a pre-petition retainer by the Debtor of $15,000.00. Based on the amount of work performed in the case, as reflected on the Court's docket, the Plan Proponent does not believe that there will be significant additional fees over and above the pre-petition retainer. The Receiver may also have commissions and unpaid expenses. All allowed administration claims will be paid in full in cash on the Effective Date.

Class I

Classification: Class I consists of the Secured Claims of Empire Assets Growth, LLC in the amount of $1,033,547.39, as determined by the Court, as of July 20, 2016, plus any additional, per diem accruals, through closing. The per diem amount determined by the Court is $262.97. Additionally, any further expenses or charges incurred by the Secured Creditor through closing shall be added to the final claim, and as approved by the Court if necessary.

Treatment: Class I Claims shall receive the following treatment: payment on the Effective Date of the Plan through the transfer of the Property to Empire Assets. Class I claims shall be satisfied upon the Effective Date provided that the Property be transferred to Empire Assets on the Effective Date, free and clear of all liens, claims, encumbrances except the Mortgage held by Empire Assets, and all other documents related to the Property have been turned over to Empire Assets or its designee, assignee or nominee.

Pursuant to § 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer in connection with, or in furtherance of the Plan shall not be subject to tax under any law imposing a stamp tax, real estate transfer tax, mortgage recording tax or similar tax. Empire Assets shall have the protections afforded under the "good faith" purchase provisions of § 363(m) of the Bankruptcy Code and all stay provisions under Bankruptcy Rule 6004(h) or elsewhere will be waived. Class I is an impaired class.

Class II

Classification: Class II consists of the Secured tax Claim of the New York City Dept. of Finance in the amount of $27,004.95, pursuant to a proof of claim filed on April 20, 2015 by the New York City Dept. of Finance.

Treatment: Class II Claims shall be paid the full amount of their claim as allowed. Class II is an unimpaired class.

Class III

Classification: Class III consists of the Secured tax Claim of New York City Water Board Department of Environmental Protection in the amount of $12,508.18, pursuant to a proof of claim filed on February 6, 2015 by the New York City Water Board Department of Environmental Protection. See, New York Code Public Authorities Law § 1045-j(5) (" **§ 1045-j. Imposition and disposition of sewer and water fees, rates, rents or charges... 5.** Such fees, rates, rents or other charges, if not paid when due, shall constitute a lien upon the premises served and a charge against the owners thereof, which lien and charge shall bear interest at the same rate as would unpaid taxes of the city. Such lien shall take precedence over all other liens or encumbrances, except taxes, and may be foreclosed against the lot or building served in the same manner as a lien for such taxes...")

Treatment: Class III Claims shall be paid the full amount of their claim as allowed, on the Effective Date. Class III is an unimpaired class.

Class IV

Classification: Class IV consists of the Priority tax Claim of the New York State Department of Finance in the amount of $738.65, pursuant to a proof of claim filed on February 4, 2015 by the New York State Department of Finance.

Treatment: Class IV Claims shall be paid the full amount of their claim as allowed on the Effective Date. Class IV is an unimpaired class.

Class V

Classification: Class V consists of the Priority tax Claim of the New York State Dept. of Finance in the amount of $3,638.86, pursuant to a proof of claim filed on April 20, 2015 by the New York State Dept. of Finance.

Treatment: Class V Claims shall be paid the full amount of their claim as allowed. Class V is an unimpaired class.

Class VI

Classification: Class VI consists of the Priority tax Claim of the Internal Revenue Service in the amount of $4,234.90, pursuant to a proof of claim filed on March 19, 2015 by the Internal Revenue Service.

Treatment: Class VI Claims shall be paid as follows: upon Confirmation of the Plan, and in accordance with § 506(a) of the Bankruptcy Code, Class VI claim shall be paid the full amount of their claim as allowed. Class VI is an unimpaired class.

Class VII

Classification: Class VII consists of all allowed Unsecured Claims against the Debtor, (including Empire Asset's Deficiency Claim). The Debtor's Unsecured Creditors are set forth in Schedule F of the Debtor's Schedules, which were filed with the Court on January 23, 2015. The total amount of Allowed Unsecured Claims, excluding Empire Asset's Deficiency Claim, is estimated by the Debtor to be approximately $79,952.05.

Treatment: Holders of Allowed Class VII Claims shall be paid in full in cash, with interest, on Effective Date. Class VII is an unimpaired class.

Class VIII

Classification: Class VIII consists of allowed Equity Interests or Claims or Exemptions of the Debtor.

Treatment: Class VIII claims will be the allowed homestead exemption of the Debtor, Nancy Rojas-Torres in the amount determined by the Court to be $95,737,00, as of July 20, 2016. That amount will be reduced by the final amount of the Class I claim including additional per diem accrual or additional charges through closing. It will also be reduced by the pre-petition Class II secured claim of the New York City Dept. of Finance in the amount of $27,004.95 as well as the pre-petition Class III Secured Claim of New York City Water Board Department of Environmental Protection in the amount of $12,508.18. Class VIII Claims shall be paid in full in cash, on the Effective Date. Class VIII is an unimpaired class.

E. **JURISDICTION.**

After Confirmation, the Court will retain jurisdiction to resolve, among other matters, issues relating to objections to Claims.

F. **CONFIRMATION REQUIREMENTS AND PROCEDURES.**

To be confirmable, the Plan must meet the requirements listed in § 1129(a) or (b) of the Bankruptcy Code. The requirements include that the Plan must be proposed in good faith; at least one impaired class of claims must accept the Plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129 of the Bankruptcy Code, and they are not the only requirements for confirmation.

a. **Who May Vote or Object**.

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, holders of claims in Classes I are unimpaired, and are therefore not entitled to vote to accept or reject the Plan. Holders of claims in Class II are impaired and are entitled to vote. The Plan Proponent shall send ballots to the holders of claims in impaired classes. While, holders of Class III claims may be impaired, they are not entitled to vote.

1. *Allowed Claim or Allowed Equity Interest.*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or equity interest holder cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

2. *Impaired Claim or Impaired Equity Interest.*

As noted above, the holder of an allowed claim or allowed equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the

Bankruptcy Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. *Who is **Not** Entitled to Vote.*

The holders of the following five types of claims and equity interests are ***not*** entitled to vote:

A. Holders of claims and equity interests that have been disallowed by an order of the Court;
B. Holders of other claims or equity interests that are not "allowed claims" or "allowed equity interests", unless they have been "allowed" for voting purposes.
C. Holders of claims or equity interests in unimpaired classes;
D. Holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Bankruptcy Code;
E. Holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and
F. Administrative expenses.

Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.

4. *Who Can Vote in More than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

b. **Votes Necessary to Confirm the Plan**.

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by "cram down" on non-accepting classes, as discussed later in Section B.2.

1. *Votes Necessary for a Class to Accept the Plan.*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half (½) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

2. *Treatment of Non-accepting Classes.*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the non-accepting classes are treated in the manner prescribed by § 1129(b) of the Bankruptcy Code. A Plan that binds non-accepting classes is commonly referred to as a "cram down" Plan.

The Code allows the Plan to bind non-accepting classes of claims or equity interests if it meets all the requirements for consensual confirmation, except the voting requirements of § 1129(a)(8) of the Bankruptcy Code does not "discriminate unfairly," and is "fair and equitable" toward each impaired class that has not voted to accept the Plan.

You should consult your own attorney if a "cramdown" confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.

VII. SATISFACTION OF CLAIMS, INTERESTS AND SETOFFS

Consideration to be received by holders of allowed Claims and Interests pursuant to the Plan shall be in full and final satisfaction, release and discharge of such Claims or Interests, as the case may be.

A plan of reorganization does not discriminate unfairly within the meaning of the Bankruptcy Code if no class receives more than it is legally entitled to receive for its Claims or equity interests. "Fair and equitable" has different meanings for Secured and Unsecured Claims.

With respect to a Secured Claim, "fair and equitable" means either:

(a) the impaired Secured Creditor retains its Liens to the extent of its Allowed Claim and receives deferred cash payments at least equal to the allowed amount of its Claim with a present value as of the Effective Date at least equal to the value of such Creditor's interest in the property securing its Liens;
(b) property subject to the Lien of the impaired Secured Creditor is sold free and clear of that Lien, with that Lien attaching to the proceeds of the sale; or

(c) the impaired Secured Creditor realizes the "indubitable equivalent" of its Claim under the Plan.

With respect to an Unsecured Claim, "fair and equitable" means either:

(a) each impaired Unsecured Creditor receives or retains property of a value equal to the amount of its Allowed Claim; or

(b) the holders of Claims and Interests that are junior to the Claims of the dissenting class will not receive any property under the Plan.

In the event one or more classes of impaired Claims rejects the Plan, the Court will determine at the Confirmation Hearing whether the Plan is fair and equitable and does not discriminate unfairly against any rejecting impaired class of Claims.

Disbursing Agent. The Law Offices of David Carlebach shall be the Disbursing Agent in this matter. The Disbursing Agent shall disburse the Plan Payment in accordance with the Plan, in satisfaction of all claims against the Debtor’s Estate. The Disbursing Agent shall not be compensated for services rendered under the Plan and shall not be required to secure a bond.

G. **TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

a. **Rejection of Executory Contracts and Unexpired Leases.** On the Effective Date, all Executory Contracts and Unexpired Leases to which the Debtor is a party shall be deemed rejected in accordance with § 365 of the Bankruptcy Code. The Plan Proponent does not believe that there are any executory contracts and unexpired leases which would be subject to rejection.

b. **Rejection Claims.** Allowed Claims arising from the rejection of Executory Contracts and Unexpired Leases of the Debtor shall be treated as Unsecured Claims.

c. **Bar to Rejection Claims.** A Proof of Claim with respect to any Unsecured Claim for damages arising from the rejection of an Executory Contract or Unexpired Lease shall not be timely filed unless it is filed with the Bankruptcy Court and served so that it is received by the Debtor within thirty (30) days after the later of (i) the date of entry of a Final Order approving such rejection (unless such Final Order expressly provides a Bar Date with respect to such Claim, in which event no Proof of Claim with respect to such Claim shall be deemed timely unless it is filed with the Bankruptcy Court and served in the manner provided in such Final Order), or (ii) the Effective Date. Any such Claim not timely filed and served shall be forever barred from assertion and may not be enforced against the Debtor, or its successors or its respective properties.

H. **INJUNCTION AND RELEASES**

d. **Injunction**. Except (a) as otherwise provided in the Plan; or (b) as otherwise provided under the Confirmation Order and entered by the Bankruptcy Court, the entry of the Confirmation Order shall forever stay, restrain and permanently enjoin with respect to any claim or interest held as of the Effective Date: (y) the commencement or continuation of any action, the employment of process, or any act to collect, enforce, attach, recover or offset from the

Property or property of the Debtor's state that has been, or is to be, distributed under the Plan, and (z) the creation, perfection or enforcement of any lien or encumbrance against the Property or any property of the Estate that has been, or is to be transferred or distributed under the Plan.

Except as otherwise provided in this Plan or Confirmation Order, the entry of the Confirmation Order shall constitute an injunction against the commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset, from the Debtor, from Empire Assets or from the Property or property of the Estate, any claim, obligation or debt that was held by any person or entity as of the Effective Date except pursuant to the terms of the Plan.

e. **Limitation of Liability**. Neither the Debtor, Empire Assets nor any of Empire Asset's respective officers, directors, or employees (acting in such capacity) nor any professional person employed by any of them, shall have or incur any liability to any entity for any action taken or omitted to be taken in connection with or related to the formulation, preparation, dissemination, Confirmation or consummation of the Plan, the Disclosure Statement, or any other action taken or omitted to be taken in connection with the Plan, except in the case of fraud, gross negligence, willful misconduct, malpractice, breach of fiduciary duty, criminal conduct, unauthorized use of confidential information that causes damages, or ultra vires acts. Nothing herein shall limit the liability of the Debtor's professionals pursuant to Rule 1.8 (h)(1) of the New York State Rules of Professional Conduct. Nothing in the Plan or the Confirmation Order shall effect a release of any claim by the United States Government or any of its agencies or any state and local authority whatsoever, including, without limitation, any claim arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Debtor, Empire Assets, or any of their respective members, shareholders, officers, directors, employees, attorneys, advisors, agents, representatives and assigns, nor shall anything in the Plan enjoin the United States or any state or local authority from bringing any claim, suit, action or other proceedings against the Released Entities referred to herein for any liability whatever, including without limitation, any claim, suit or action arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state or local authority, nor shall anything in this Plan exculpate any party from any liability to the United States Government or any of its agencies or any state and local authority whatsoever, including liabilities arising under the Internal Revenue Code, the environmental laws or any criminal laws of the United States or any state and local authority against the Released Entities referred to herein.

f. **Plan and Confirmation Order as Release**. Except as otherwise provided in the Plan, from and after the Effective Date, a copy of the Confirmation Order and the Plan shall constitute a complete defense to any claim or liability not otherwise asserted in the Plan.

I. ALTERNATIVES TO THE PLAN

The Plan Proponent believes that the Plan provides Creditors with the best possible value that can be realized on their respective Claims. The principle alternatives to Confirmation of the Plan are: (I) confirmation of an alternative plan submitted by the Plan Proponent or by another party in interest or (ii) liquidation of the Debtor under Chapter 7 of the Bankruptcy Code.

If the Plan is not confirmed, the Plan Proponent or a party in interest theoretically could attempt to formulate an alternative Chapter 11 plan. The Plan Proponent believes that, if the Plan is not confirmed, there is a substantial likelihood that any alternative Chapter 11 plan proposed will impair Claims to a far greater degree than the Plan, and may provide for substantially smaller distributions to Creditors on account of General Unsecured Claims. Furthermore, any attempt to formulate an alternative Chapter 11 plan would necessarily delay Creditors' receipt of any initial distributions to be made and further burden the Debtor's Estate with administrative expenses that would further dilute Creditor recoveries. Accordingly, the Plan Proponent believes that the Plan clearly will enable all Creditors to realize the greatest possible recovery on their respective Claims with the least delay.

a. **Liquidation Under Chapter 7**.

If the Plan or any other Chapter 11 plan for the Debtor cannot be confirmed under §§ 1129(a) or 1129(b) of the Bankruptcy Code, the Chapter 11 Case may be converted to a case under Chapter 7 of the Bankruptcy Code, in which case a trustee would be elected or appointed to Liquidate the assets of the Debtor for distribution to Creditors pursuant to Chapter 7 of the Bankruptcy Code. In the event of a conversion of the Debtor's Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code, an additional tier of administrative expenses entitled to priority under § 507(a)(2) of the Bankruptcy Code would be incurred. Such administrative expenses would include the Chapter 7 trustee's commissions and would include fees for the trustee's attorneys, accountants, or other professionals retained by the trustee. It is clear that in a distressed sale liquidation of the Debtor’s assets, unsecured creditors will receive no distribution on their claims.

b. **Additional Risks**.

In the event that the Plan is not confirmed or the Chapter 11 Case is converted to a case under Chapter 7 of the Bankruptcy Code, the Plan Proponent believes that such inaction or action, as the case may be, will cause substantial expenses to be incurred by the Debtor and will otherwise serve only to unnecessarily prolong the Chapter 11 Case and otherwise negatively affect Creditors' recoveries on account of their Claims.

J. **TAX CONSEQUENCES**

The following discussion summarizes certain federal income tax consequences of the Plan to the Debtor and the holders of Claims based upon the Internal Revenue Code, the Treasury Regulations promulgated thereunder, judicial authorities and current administrative rulings and practices now in effect, all of which are subject to change at any time by legislative, judicial or administrative action. Any such change could be retroactively applied in a manner that could adversely affect the Debtor and holders of Claims. In addition, certain aspects of the following discussion are based on proposed Treasury Regulations.

The tax consequences of certain aspects of the Plan may be subject to administrative or judicial interpretations that differ from the discussion below. The Plan Proponent has not requested, nor do they intend to request, a tax ruling from the IRS, nor will the Plan Proponent, with respect to the federal income tax consequences of the Plan, obtain any opinion of counsel. Consequently, there can be no assurance that the treatment set forth in the following discussion will be accepted by the IRS. Further, matters not discussed below may affect the federal income tax consequences to the Debtor, holders of Claims and holders of Interests. For example, the following discussion does not address state, local or foreign tax considerations that may be applicable to the Debtor or the holders of Claims, and the discussion does not address the tax consequences of the Plan to certain types of holders of Claims and holders of Interests (including non-U.S. persons, financial institutions, life insurance companies, tax-exempt organizations and taxpayers subject to the alternative minimum tax) who may be subject to special rules not addressed herein.

THE DISCUSSION SET FORTH BELOW IS INCLUDED FOR GENERAL INFORMATION ONLY. THE PLAN PROPONENT AND ITS COUNSEL ARE NOT MAKING ANY REPRESENTATIONS REGARDING THE PARTICULAR TAX CONSEQUENCES OF CONFIRMATION AND CONSUMMATION OF THE PLAN, WITH RESPECT TO THE DEBTOR, HOLDERS OF CLAIMS OR HOLDERS OF INTERESTS, NOR ARE THEY RENDERING ANY FORM OF LEGAL OPINION OR TAX ADVICE ON SUCH TAX CONSEQUENCES. THE TAX LAWS APPLICABLE TO INDIVIDUALS AND CORPORATIONS IN BANKRUPTCY ARE EXTREMELY COMPLEX, AND THE FOLLOWING SUMMARY IS NOT EXHAUSTIVE. HOLDERS OF CLAIMS AND HOLDERS OF INTERESTS ARE STRONGLY URGED TO CONSULT THEIR TAX ADVISORS REGARDING TAX CONSEQUENCES OF THE PLAN, INCLUDING FEDERAL, FOREIGN, STATE AND LOCAL TAX CONSEQUENCES.

a. **Tax Consequences to the Debtor:**

Consummation of the Plan, including certain cancellation of indebtedness of the Debtor and other actions required under the Plan may result in recognition of income, deductions, gain or loss to the Debtor and possible the incurrence of tax on the part of the Debtor or the Reorganized Debtor. Any such tax may constitute an Administrative Expense Claim of the Debtor.

b. **General Tax Considerations for Holders of Claims:**

The receipt of solely Cash by a holder of an Allowed Unsecured Claim against the Debtor may be a fully taxable transaction. Accordingly, a holder of such a Claim may recognize gain or loss in an amount equal to the difference between (i) the amount realized by the holder in satisfaction of its Claim (other than in respect of any Claim for accrued but unpaid interest, and excluding any portion required to be treated as imputed interest due to the post-Effective Date distribution of such consideration following the resolution of any Disputed Claims in the same class), and (ii) the holder's adjusted tax basis in its Claim (other than any Claim for accrued but unpaid interest).

The Plan Proponent has not researched the tax consequences of the Plan to holders of Claims and Interests nor has it requested a ruling from federal, state or local taxing authorities with respect to these matters. There may be federal, state, local or foreign tax considerations applicable to each Creditor or holder of an Interest. EACH CREDITOR AND HOLDER OF AN INTEREST IS URGED TO CONSULT ITS OWN TAX ADVISOR AS TO THE CONSEQUENCES OF THE Plan AND APPLICABLE FEDERAL, STATE, LOCAL AND FOREIGN TAX LAWS. The Plan is not intended to result in the forfeiture or compromise of any of the Debtor's tax attributes, all of which are preserved to the extent allowed by applicable law.

c. **Transfer Taxes:**

Pursuant to § 1146 of the Bankruptcy Code, the issuance, transfer, or exchange of any security and the making or delivery of any instrument of transfer in connection with or in furtherance of the Plan shall be exempt and shall not be subject to tax under any law imposing a stamp tax, real estate Transfer Tax, mortgage recording tax or similar tax, and, to the extent provided by § 1146 of the Bankruptcy Code, if any, shall not be subject to any state, local or federal law imposing sales tax. In addition, pursuant to § 1142(b) of the Bankruptcy Code, the Order confirming the Plan shall direct the City Register of the City of New York, County of Kings (the "Register") to record any recordable document executed in connection with the consummation of the Plan, without the payment of Transfer Taxes. The Register, and any applicable Register's Office in the State of New York or its municipalities and counties shall record any recordable document executed in connection therewith without the payment of any Transfer Taxes.

In the event any provision of the Plan is determined to be unenforceable, such determination shall in no way limit or affect the enforceability and operative effect of any or all other provisions of the Plan.

CONCLUSION

The acceptances of the holders of all Classes of impaired Claims are hereby solicited. The Plan Proponent believes that Confirmation of the Plan is in the best interests of all Creditors. The Plan Proponent has worked diligently and expeditiously to formulate a Plan that would afford Creditors substantially more than they would receive if the Chapter 11 Case were converted to liquidation case under Chapter 7 of the Bankruptcy Code. The Plan Proponent believes that the Plan is in the best interests of Creditors and strongly urges all Creditors to vote for the Plan.

In the event of any inconsistency between the terms of the Plan and this Disclosure Statement, the terms of the Plan shall be controlling.

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THE PLAN PROPONENT SUBMITS THAT THE PLAN COMPLIES IN ALL RESPECTS WITH CHAPTER 11 OF THE BANKRUPTCY CODE, AND RECOMMENDS TO HOLDERS OF CLAIMS AND INTERESTS WHO ARE ENTITLED TO VOTE ON THE PLAN THAT THEY VOTE TO ACCEPT THE PLAN. THE PLAN PROPONENT REMINDS SUCH HOLDERS THAT EACH BALLOT, SIGNED AND MARKED TO INDICATE THE HOLDER'S VOTE, MUST BE RECEIVED BY NO LATER THAN ____ _.M. E.S.T. ON _____ __, 2016 AT THE FOLLOWING ADDRESS:

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July 29, 2016

Respectfully submitted,

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By: */s/ David Carlebach*
David Carlebach